

46 Am. Jur. 2d Judges § 57

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Judges

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VII. Compensation; Benefits; Allowances for Expenses

B. Changes in Compensation

§ 57. Reduction or increase of judge's compensation during term of office

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  22(7)

The Compensation Clause of the United States Constitution prohibits the diminution of federal judges' compensation during their continuance in office.¹ The Compensation Clause does not forbid Congress from applying a generally applicable, nondiscriminatory tax (including an increase in rates or a change in conditions) to the salaries of federal judges, whether or not they were appointed before enactment of the tax.²

Observation:

Under the Compensation Clause, the legislature cannot directly reduce judicial salaries even as part of an equitable effort to reduce all government salaries.³

In the absence of a constitutional prohibition, a state legislature generally may increase or diminish judicial salaries during a term of office.⁴ Many state constitutions either contain similar provisions with reference to the compensation of judges of state courts,⁵ or prohibit an increase or diminution during the elected term.⁶ In such situations, it is said that the contractual obligation to pay judicial salaries assumed by the state may not constitutionally be impaired by changes in the terms of the offer that are less beneficial than those at the beginning of a judge's service during the term's performance.⁷

Some constitutional provisions, however, qualify the rule somewhat, providing that compensation of justices, judges, and justices of the peace may not be diminished during their terms of office, unless by law applying generally to all salaried officers of the state,⁸ and similar rules have been statutorily enacted in some jurisdictions.⁹ A state constitutional provision that chancellors are entitled to receive for their services compensation that will not be diminished during their time in office does not prevent the supreme court from suspending judges without pay during the period in which they will perform no services, so long as the suspension is part of a final order of discipline for judicial misconduct.¹⁰ Thus, a constitutional provision that the compensation of a judge may not be diminished during the judge's term of office does not preclude a state supreme court from imposing a suspension without compensation as a sanction in a judicial discipline proceeding.¹¹

A decision which ruled that the governor and the legislature, by directly and explicitly tying consideration of judicial compensation to unrelated policy initiatives, violated the separation of powers doctrine, did not establish that current and retired judges and justices were constitutionally entitled to raises, and thus an award of retroactive monetary damages, as compensation for the state's failure to grant raises to judges and justices, was not warranted.¹²

Observation:

The purposes of prohibitions against diminishing judicial compensation are to promote the independence of the judiciary¹³ and enhance the quality of justice by attracting able lawyers whose private practice salaries may be more lucrative than those of the bench.¹⁴

Caution:

A state statute which purported to reduce salaries of reserve judges by an amount equal to any Federal Social Security benefits received by such judges was invalid under the Supremacy Clause of the United States Constitution,¹⁵ since it effectively deprived social security recipients of benefits provided under federal law.¹⁶

CUMULATIVE SUPPLEMENT

Cases:

State's contribution to cost of state judges' health care insurance premiums is not judicial "compensation" protected from direct diminution by state Constitution's Judicial Compensation Clause; such contribution is not part of a judicial salary, nor a permanent remuneration for expenses necessarily incurred in fulfillment of judicial obligations. [McKinney's Const. Art. 6, § 25\(a\)](#); [McKinney's Civil Service Law § 167\(8\)](#). [Bransten v. State](#), 30 N.Y.3d 434, 68 N.Y.S.3d 19, 90 N.E.3d 818 (2017).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S. Const. Art. III, § 1.
District court judges enjoy the protections of Article III, namely, life tenure and pay that cannot be diminished. *Wellness Intern. Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 191 L. Ed. 2d 911 (2015).
- 2 U.S. v. Hatter, 532 U.S. 557, 121 S. Ct. 1782, 149 L. Ed. 2d 820 (2001).
- 3 U.S. v. Hatter, 532 U.S. 557, 121 S. Ct. 1782, 149 L. Ed. 2d 820 (2001).
- 4 *Higer v. Hansen*, 67 Idaho 45, 170 P.2d 411 (1946).
- 5 *Garian v. City of Highland Park*, 176 Mich. App. 379, 439 N.W.2d 368 (1989); *Matter of Ferguson*, 304 S.C. 216, 403 S.E.2d 628 (1991).
- 6 *Franks v. State*, 772 S.W.2d 428 (Tenn. 1989); *County Court Judges Ass'n v. Sidi*, 752 P.2d 960 (Wyo. 1988).
A county cannot reduce a judge's correctly calculated salary or supplement, but an incorrectly calculated salary is not the amount due the recipient, and the county can, and should, reduce it. *Maddox v. Hayes*, 278 Ga. 141, 598 S.E.2d 505 (2004).
- 7 *Sylvestre v. State*, 298 Minn. 142, 214 N.W.2d 658 (1973).
- 8 *Goodheart v. Thornburgh*, 118 Pa. Commw. 75, 545 A.2d 399 (1988), order aff'd, 521 Pa. 316, 555 A.2d 1210 (1989), on reconsideration, 523 Pa. 188, 565 A.2d 757 (1989).
As to compensation of justices of the peace, generally, see Am. Jur. 2d, Justices of the Peace § 2.
- 9 *Garian v. City of Highland Park*, 176 Mich. App. 379, 439 N.W.2d 368 (1989).
- 10 *Mississippi Com'n on Judicial Performance v. Littlejohn*, 172 So. 3d 1157 (Miss. 2015).
- 11 *In re Disciplinary Action Against McGuire*, 2004 ND 171, 685 N.W.2d 748 (N.D. 2004).
- 12 *Larabee v. Governor of State*, 27 N.Y.3d 469, 34 N.Y.S.3d 389, 54 N.E.3d 61 (2016).
- 13 U. S. v. Will, 449 U.S. 200, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980); *Matter of Ferguson*, 304 S.C. 216, 403 S.E.2d 628 (1991).
- 14 U. S. v. Will, 449 U.S. 200, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980).
- 15 U.S. Const. Art. VI, § 2.
- 16 *Raskin v. Moran*, 684 F.2d 472 (7th Cir. 1982).

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